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No. 86-926

Supreme Court, U.S.  
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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1986

TIMOTHY ELING, et al.,

*Petitioners,*

v.

C. PAUL JONES, Minnesota Public Defender,

*Respondent.*

ON PETITION FOR WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT

BRIEF IN OPPOSITION TO  
PETITION FOR WRIT OF CERTIORARI

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# QUESTIONS PRESENTED FOR DISCUSSION

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2. What are the objectives of the study?  
3. What are the research questions?  
4. What are the hypotheses?  
5. What are the independent and dependent variables?  
6. What are the control variables?  
7. What are the experimental procedures?  
8. What are the data collection methods?  
9. What are the data analysis methods?  
10. What are the conclusions?

## QUESTION PRESENTED FOR REVIEW

Whether a state public defender acts under color of state law within the meaning of 42 U.S.C. § 1983 when he refuses a request by a client to provide the client with the defender's only copy of the transcript of that client's trial after direct appeals of that client's conviction have been exhausted when that refusal is based upon the public defender's opinion that the transcript may be needed in the future for post-sentencing applications for relief or other legal representation of that client.

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Respondent C. Paul Jones, Minnesota Public Defender, respectfully requests that this Court deny the Petition for Writ of Certiorari seeking review of the Eighth Circuit's opinion in this case. That opinion is reported at 797 F.2d 697 and is reproduced in Appendix A to the petition.

## STATEMENT OF THE CASE

Respondent, C. Paul Jones, the Minnesota Public Defender, is the administrative head of the Office of the Minnesota State Public Defender. Minn. Stat. § 611.22 (1986). Jones was appointed to that position by the Minnesota State Board of Public Defense, an agency committed to maintaining a high quality, independent public defense system in Minnesota. Minn. Stat. §§ 611.215 and 611.23 (1986). The Office of the State Public Defender operates as an independent agency of government in Minnesota which is able to represent its clients' interest without interference from other state officials or agencies. Aff. of C. Paul Jones, ¶ 2 (Jt. App., App. E).<sup>1</sup>

Each of the petitioners was represented at trial by an Assistant County Public Defender. Aff. of Anthony Dent, ¶ 3 (Jt. App., App. I); Aff. of Paul C. Johnson, ¶ 3 (Jt. App., App. J); Aff. of Timothy Eling, ¶ 3 (Jt. App., App. L). These county public defender offices are independent from the Office of the State Public Defender. Minn. Stat. § 611.12 (1986).

After conviction each of the three petitioners was represented on appeal by C. Paul Jones and the Office of the State Public Defender. That representation involved interviewing the petitioner, ordering the trial transcript, and preparing an appellate brief. In addition, Mr. Eling filed his own *pro se* supplemental brief with the Minnesota Supreme Court. Aff. of C. Paul Jones, ¶¶ 4B, 4C (Jt. App., App. E).

Each of the three petitioners' criminal convictions was upheld by the Minnesota Supreme Court. In the professional opinion of respondent Jones, the Supreme Court's decisions foreclosed any further non-frivolous legal proceedings on be-

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<sup>1</sup> All factual references contained herein will be to the Joint Appendix submitted by the parties to the Eighth Circuit Court of Appeals.

half of each petitioner. Aff. of C. Paul Jones, ¶¶ 4G, 5E, 6C (Jt. App., App. E).

Each of the three petitioners has requested a free copy of his trial transcript from the Office of the State Public Defender. Mr. Eling requested copies of his trial transcript both before the decision of the Minnesota Supreme Court was rendered (but after all briefs had been submitted) and after that decision had been rendered. Eling did not state any specific reason for wanting a copy of his transcript. Aff. of C. Paul Jones, ¶¶ 4D, 4G (Jt. App., App. E).

Petitioner Johnson requested a copy of all documents relating to his case, including trial transcripts, before the transcript was prepared. The Office of the State Public Defender has no records indicating that Johnson ever again requested a copy of his trial transcript. Aff. of C. Paul Jones, ¶¶ 5, 5C, 5F (Jt. App., App. E).

Petitioner Dent requested a copy of his trial transcript, indicating that he wished to complain about ineffective assistance of counsel at trial. An Assistant State Public Defender responded that, in light of the fact that the Minnesota Supreme Court had found the evidence against Dent to be "overwhelming", Dent's claim of ineffective assistance of counsel at the trial did not present an issue which was not frivolous. Aff. of C. Paul Jones, ¶ 6D (Jt. App., App. E). Dent next wrote to Mr. Jones stating that he had been asked by Magistrate Brian Short of the United States District Court in Minnesota to write to Jones to obtain transcripts of Dent's grand jury indictment and trial. Jones replied that such records would be provided to the federal court if they were requested by that court. No such request was ever received by the Office of the State Public Defender. Aff. of C. Paul Jones, ¶ 6E (Jt. App., App. E).

The Office of the State Public Defender, as part of its representation of indigent defendants, will order a trial transcript when necessary to present any significant, non-frivolous issue to state appellate or post-conviction courts, and to federal courts. Aff. of C. Paul Jones, ¶ 7 (Jt. App., App. E); Supp. Aff. of C. Paul Jones, ¶ 5 (Jt. App., App. M). Respondent Jones has two main reasons for not providing a defendant with Jones' only copy of the trial transcript after the defendant's conviction has been affirmed by the Minnesota Supreme Court. First, Jones' office has represented hundreds of such inmates in applications for post-sentence relief pursuant to Minn. Stat. § 590.01, subd. 3 (1986). In connection with many of these applications, it has been necessary to review trial transcripts. There is a continuing possibility of such post-sentence applications for relief because of potential modifications in the state determinate sentencing guidelines which may have retroactive applicability. Supp. Aff. of C. Paul Jones, ¶ 1A (Jt. App., App. M).

Second, the Office of State Public Defender needs the transcripts to respond to direct inquiries to the Office concerning its handling of the case or other aspects of the case. Often these inquiries, which can occur as long as several years after the appeal has ended, necessitate a review of portions of the trial transcript. Supp. Aff. of C. Paul Jones, ¶ 1B (Jt. App., App. M).

## REASONS FOR DENYING PETITION FOR WRIT OF CERTIORARI

The Petition for Writ of Certiorari should be denied because petitioners have failed to show that there are "special and important reasons" for this Court to grant such discretionary review. An examination of the issue presented in the petition in light of the reasons set forth in Supreme Court Rule 17 illustrates the lack of any "special and important reasons" for review to be granted.

Although petitioner has not cited to any of the specific criteria set forth in Rule 17.1, it would appear that only Rule 17.1(c) is arguably applicable.<sup>2</sup> However, the decision of the Court of Appeals neither "decided an important question of federal law which has not been, but should be, settled by this Court," nor "decided a federal question in a way in conflict with applicable decisions of this Court."

This case does not present an important, unsettled question of federal law. The law is settled that a public defender does not act "under color of state law" when performing a lawyer's traditional functions as counsel to a defendant in a criminal proceeding. *Polk County v. Dodson*, 454 U.S. 312, 325 (1981). The ethical obligations of the public defender to his client, and the constitutional obligation of the State to respect the professional independence of its public defenders, provides suf-

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<sup>2</sup> Rule 17.1(a) is not applicable because the petition does not present an instance in which there is a conflict amongst the federal courts of appeal or between the decision of which review is sought and the decision of a state court of last resort. The petition also does not claim that the decision of the Court of Appeals in this matter has "so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court as to call for an exercise of this court's power of supervision." Rule 17.1(b) is also inapplicable.

ficient assurance that public defenders' actions taken within their role as counsel are free from state control. *Id.* at 321-22.

On the other hand, a public defender acts "under color of state law" when making hiring and firing decisions on behalf of the State, actions not subject to that defender's ethical obligations to any client. *Id.* at 325, citing *Branti v. Finkel*, 445 U.S. 507 (1980). As the court below correctly pointed out, *Branti* involved a public defender acting in an employer/employee relationship. In contrast, this case involves the public defender acting in an attorney/client relationship, as was the situation in *Dodson*. 797 F.2d at 699 (A-6).

Petitioners do not seek to have this Court answer any unsettled question of law, but merely to review factual findings of the district court which compelled the conclusion that *Dodson* was the controlling case. Petitioners first claim that review should be granted because the district court improperly granted summary judgment. Specifically, petitioners claim that "[T]he district court erroneously found as a matter of fact that respondent performed a lawyer's traditional function [when denying the petitioners respondent's only copy of the trial transcript] and therefore was immune from liability under Title 42 United States Code Section 1983." Pet. at 12.

Petitioners' second argument is merely a restatement of the first argument. Petitioners argue that, in the instant case, C. Paul Jones was performing an administrative and not a lawyering function when he decided not to provide trial transcripts to petitioners after the appeal was concluded. Pet. at 13-14. Once again, petitioners are merely stating a challenge to the factual findings of the district court that Jones was performing a lawyer's traditional function when he concluded that the potential need of the trial transcripts for post-sentence applications for relief and for responding to inquiries necessitated his office keeping the trial transcript.

See Supp. Aff. of C. Paul Jones, ¶ 1 (Jt. App., App. M). Petitioners are not contending that this Court need answer an important, unsettled question of federal law, but rather to review the facts as found by the district court and as applied to settled case law.

The Court of Appeals' decision is not in conflict with any decisions of this Court. The decision does not, as claimed by petitioners, "ignore the teachings of *Dodson* that a public defender 'would act under color of state law while performing certain administrative and possibly investigative functions.' 454 U.S. at 325 (emphasis added)." Pet. at 16. First, the quoted statement from *Dodson* is not a "teaching" of *Dodson*. In fact, *Dodson* explicitly leaves open the question of whether a public defender would act under color of state law while performing certain administrative or investigative functions which do not fall within a lawyer's traditional functions as counsel to a defendant in a criminal proceeding. *Polk County v. Dodson*, 454 U.S. 312, 325 (1981). Second, the decision below is totally consistent with *Dodson* in that it held that Jones' exercise of "independent professional judgment in a criminal proceeding" brought the case squarely within the holding of *Dodson*. 797 F.2d at 699 (A-6).

Petitioners also argue that the Eighth Circuit Court of Appeals, in finding *Tower v. Glover*, 467 U.S. 914 (1984) inapplicable, read *Tower* too narrowly. Pet. at 15-16. In fact, the Court of Appeals correctly held that *Tower* was inapplicable because petitioners had not alleged a conspiracy in this matter between C. Paul Jones and other state officials. 797 F.2d at 699 (A-5). The unambiguous holding of *Tower* is that a public defender who is alleged to have conspired with state officials to deprive another of federal rights has acted "under color of state law." 467 U.S. at 923. Thus, the Court of Appeals' decision does not conflict with *Tower*.

## CONCLUSION

This Court should deny the Petition for Writ of Certiorari because the decision of the Eighth Circuit Court of Appeals simply affirmed a factual finding of the district court. The proposed question for review does not pose an important, unsettled question of federal law. The Court of Appeals' decision does not conflict with the controlling decisions of this Court. Accordingly, respondent C. Paul Jones respectfully requests that this Court deny the petition.

Respectfully submitted,

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